

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

2014-1533

ALIGN TECHNOLOGY, INC.

Petitioner,

v.

INTERNATIONAL TRADE COMMISSION

Respondent.

On appeal from the United States International Trade Commission in Investigation
No. 337-TA-833

**UNOPPOSED MOTION OF CLEARCORRECT OPERATING, LLC AND
CLEARCORRECT PAKISTAN (PRIVATE), LTD. FOR LEAVE TO
INTERVENE IN APPEAL NO. 2014-1533**

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*Counsel for ClearCorrect Operating,
LLC and ClearCorrect Pakistan
(Private), Ltd.*

ClearCorrect Operating, LLC and ClearCorrect Pakistan (Private), Ltd. (collectively “Intervenors”) move under FED. R. APP. P. for leave to intervene in Appeal No. 2014-1533.

Intervenors seek to intervene because they were parties in interest in the proceeding before the United States International Trade Commission (“ITC”), and their interest will therefore be affected by any order entered on the issues reviewed in this appeal.

I. BACKGROUND.

Align Technology, Inc. filed a complaint for violation of 19 U.S.C. § 1337 on March 1, 2012, naming the Intervenors as Respondents and alleging infringement of several of Align’s patents. The ITC instituted the underlying Investigation No. 337-TA-833, In the Matter of Certain Digital Models, Digital Data, and Treatment Plans for Use in Making Incremental Dental Positioning Adjustment Appliances, the Appliances Made Therefrom, and the Methods of Making the Same. The ITC issued a final determination in its April 3, 2014 “Commission’s Opinion” along with two associated cease and desist orders that prohibit the Intervenors from engaging in certain acts relating to the manufacture of orthodontic appliances.

Align filed a petition for review on June 3, 2014, presumably to address the issues upon which the Intervenor prevailed before the Commission. Align's petition for review resulted in this appeal, Case No. 14-1533.

II. ARGUMENT.

Respondents in ITC proceedings are "entitled to participate in [the] appeal." *See Surface Tech., Inc., v. U.S. Int'l Trade Comm'n*, 780 F.2d 29, 31 (Fed. Cir. 1985). In *Surface Tech.*, the Court permitted the prevailing respondents to intervene in the appeal and "raise any claim in support of the ITC's determination of no violation." *Id.*

The Intervenor has a substantial interest in this appeal. First and foremost, Align seeks through this appeal to establish infringement by the Intervenor of certain patent claims and to secure remedial orders. The orders Align seeks would effectively exclude the Intervenor ClearCorrect Pakistan (Private) Ltd. from continuing to conduct business in the United States and essentially put it out of business. Likewise, the orders Align seeks would disrupt ClearCorrect Operating's relationship with its foreign vendor.

Secondly, as Respondents below, Intervenor actively and extensively participated in the ITC proceeding. Also, Intervenor invested substantial resources into the accused products as well as defending themselves against the

infringement allegations made in the ITC proceeding. Consequently, Intervenor have a substantial interest in this appeal.

Intervenor cannot adequately protect their interest in this appeal without full participation. Therefore, Intervenor should be permitted to intervene in this appeal.

III. STATEMENT POSITION OF THE PARTIES.

Pursuant to Rule 27(a)(5) of the Federal Circuit, Counsel for the ITC and Counsel for Align have indicated they DO NOT oppose this motion.

IV. CERTIFICATE OF INTEREST.

Counsel for ClearCorrect Operating, LLC and ClearCorrect Pakistan (Private), Ltd. certify the following:

1. The full name(s) of every party represented by us are:

ClearCorrect Operating, LLC

ClearCorrect Pakistan (Private), Ltd.
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by us is: N/A.
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party represented by us are: N/A.

4. The names of all law firms and the partners and associates that appeared for intervenors in the trial court or are expected to appear for Intervenor in this Court are:

Michael D. Myers, Robert H. Espey II
McClanahan Myers Espey, LLP

Gary M. Hnath; Paul W. Hughes
Mayer Brown LLP

IV. PRAYER FOR RELIEF.

WHEREFORE, pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure, Intervenor move for leave to intervene in this appeal and respectfully request that the Court grant their motion.

Respectfully submitted,

By: Michael D. Myers

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CERTIFICATE OF SERVICE

I, Michael D. Myers, hereby certify that on June 16, 2014, I served the foregoing Motion for Leave to Intervene on Respondent United States International Trade Commission via U.S. Mail, as follows:

The Honorable Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, S.W., Room 112
Washington, D.C. 20436

I further certify that on June 16, 2014, I served the foregoing Motion for Leave to Intervene on the following parties to the agency proceedings via U.S. Mail and electronic mail, as follows:

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